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Elg 9/30/13

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

oOo

IN RE

BK-N- 13-50648-BTB

MARK DINGLEY,

Adv. No. 13-05036  
CHAPTER 7

Debtor(s).

YELLOW EXPRESS, LLC and YELLOW  
LOGISTICS, LLC,

Hearing Date: 10/8/13  
and Time: 2:00 p.m.  
Mtn No. \_\_\_\_\_  
Est Time: 5 Minutes

Plaintiffs,

REPLY TO OPPOSITION TO MOTION TO  
DISMISS

vs.

MARK DINGLEY

Defendant,

\_\_\_\_\_ /

COMES NOW, Defendant, Mark Dingley, by and through undersigned counsel and files the following Reply to the Plaintiffs' opposition to his motion to dismiss.

As stated in the initial motion, the Plaintiffs asked Mr. Dingley to tow a Kenworth from Carson City to Reno. Mr. Dingley would not release the truck without proof of ownership. On September 10, 2008 Mr. Dingley conducted a lien sale. He was the successful bidder, and he resold the truck for \$47,000.00.

The Plaintiffs do not allege improper notice of the lien sale. The only allegation which is plead is Mr. Dingley did not allow the Plaintiffs to retrieve the truck due to their failure to provide sufficient identification.

1 Mr. Dingley cited Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868  
2 (2009). Mere recitals of the elements of a cause of action, supported only by conclusory  
3 statements, do not suffice. *Id.* at 1949.

4 The Plaintiffs' opposition does only this, and it is even highlighted in bold print in their  
5 opposition. This does nothing to change the fact that Mr. Dingley was asked by the Plaintiffs to  
6 tow the truck, and that he refused to retrieve the vehicle due to their failure to provide proper  
7 identification. Everything else in the complaint is a conclusory statement.

8 There can be no claim for embezzlement as it requires an appropriation of the property to  
9 a use other than which it was entrusted. The Plaintiffs do not allege the notice of the lien sale  
10 was defective. Therefore, there was no misappropriation of the property.

11 To qualify under §523(a)(6) the Plaintiffs must plead facts to show the injury is  
12 "malicious." This means that it must also be a wrongful act, done intentionally, which  
13 necessarily causes injury, and which is done without just cause or excuse.

14 Because the complaint alleges Mr. Dingley did not find the Plaintiffs' identification  
15 acceptable, there are facts demonstrating just cause. For these reasons, the complaint must be  
16 dismissed.

17  
18 Dated: This 30 day of September, 2013

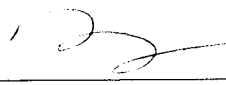
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20 By: 

21 Michael Lehnert, Esq.  
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24 Nevada Bar Number 003331  
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**CERTIFICATE OF SERVICE BY MAIL**

Pursuant to Federal Rule of Civil Procedure 5(b), I certify that on the 30  
day of September, 2013 I deposited for mailing in the United States Post Office  
in Reno, Nevada, with postage thereon fully prepaid, a true copy of the within  
REPLY TO OPPOSITION TO MOTION TO DISMISS addressed as follows:

Mark Wray, Esq.  
608 Lander St.  
Reno, NV 89509

  
\_\_\_\_\_  
Dolores Stigall